



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TEXAS BACK INSTITUTE
P O BOX 262409
PLANO TX 75026-2409

Carrier's Austin Representative Box

Box Number 44

Respondent Name

OLD REPUBLIC INSURANCE CO

MFDR Date Received

February 28, 2012

MFDR Tracking Number

M4-12-2225-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Auth not required for emergency"

Amount in Dispute: \$6,769.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This medical dispute concerns reimbursement for medical treatment the requestor provided to the claimant on September 1, 2011. The requestor has billed \$13,546.44 for the services rendered, and submits it is entitled to reimbursement in the amount of \$6769.00. The services underlying the disputed charges relate to a surgical procedure that was performed on September 15, 2011. It is undisputed preauthorization was not sought for the surgical procedure, though the requestor maintains preauthorization was not necessary due to the alleged emergent nature of the procedure. The requestor has attached a letter to its request for medical dispute resolution explaining the alleged emergent nature of the surgery. It is interesting to note that said letter/explanation was not previously submitted with the initial bill or the request for reconsideration. Previously submitted, however, was a letter dated September 14, 2011 indicating that 'pending authorization, this surgery would be scheduled in the near future.' This comment directly cuts against the claim that the surgery was performed on an emergency basis. Documentation from Dr. Edwards on September 14, 2011 suggests the claimant was not experiencing the bladder and bowel problems Dr. Zigler noted. Dr. Edwards also indicated he would be seeking approval for surgery. These facts do not support the requestor's contention that the surgery was an emergency. The documentation provided does not meet the definition of emergency. As such, preauthorization was required, and not obtained, for the surgical procedure. For this reason, not reimbursement is due."

Response Submitted by: Flahive, Ogden & Latson, P. O. Drawer 201329, Austin TX 78720

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 15, 2011	63090-62, 22558-80, 22851-80, 20931-80	\$6,769.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for health care providers to pursue a medical fee dispute.
2. 28 Texas Administrative Code §134.600 requires preauthorization for specific treatments and services.
3. 28 Texas Administrative Code §133.2, effective July 27, 2008, 33 TexReg 5701, defines a medical emergency.
4. The services in dispute were reduced/denied by the respondent with the following reason code:

Explanation of benefits dated October 19, 2011

- 197 – Payment adjusted for absence of precert/preauth

Explanation of benefits dated November 7, 2011 (for assistant surgeon)

- 197 – Payment adjusted for absence of precert/preauth

Explanation of benefits dated December 8, 2011

- 193 – Original payment decision maintained
- 197 – Payment adjusted for absence of precert/preauth
- 40 – Qualifications for emergent/urgent care not met
- *Reviewed by medical director. The surgery did not meet the “emergency” definition as defined by TDI. In addition, the surgeon scheduled the surgery in an outpatient setting. There was no direct admit through ER.

Explanation of benefits dated December 12, 2011 (for assistant surgeon)

- 193 – Original payment decision maintained
- 197 – Payment adjusted for absence of precert/preauth
- *Services did not meet emergency criteria as defined by TDI. There was no direct admit nor admit via ER

Issues

1. Did the requestor obtain preauthorization approval prior to providing the health care in dispute in accordance with 28 Texas Administrative Code §134.600?
2. Did the surgery in dispute meet the criteria to sufficiently support a medical emergency in accordance with 28 Texas Administrative Code §133.2?
3. Is the requestor entitled to reimbursement?

Findings

1. Review of the respondent's submitted documentation finds an evaluation report by Dr. Jack E. Zigler, M.D. dated September 14, 2011 stating, “With both the anterior options, there is a small chance that it would not be possible to safely retrieve the fragment anteriorly, which would necessitate a smaller secondary posterior decompression. The likelihood for this is small, but both of the anterior approaches would remove future problems of recurrent herniation from occurring. Pending authorization, this surgery would be scheduled in the near future. Please feel free to contact my office.” Review of the respondent's submitted documentation finds a consultation report by Dr. Jack E. Zigler, M.D. dated September 14, 2011 stating, “He denies any problems to me with his bowels or bladder...however he does not have any problem with emptying his bladder. He has full control of his bowels...He is having difficulty walking due to his pain and is here for further evaluation...No problem with bowel or bladder function...No obvious external deformities. Cervical spine and thoracolumbar spine has no obvious external deformity...tender around the low back...MRI done September 13, 2011...We are going to recommend surgical management of this disease process. We will try to get his Workers Comp approval for surgery as soon as possible for microdisectomy versus anterior lumbar interbody fusion versus artificial disk replacement at the L5-S1.” Review of the submitted documentation finds that the requestor did not submit documentation to sufficiently support that the professional/surgical services performed on September 15, 2011 was on an emergency basis as defined in 28 Texas Administrative Code §133.2 (3). Therefore, the disputed services required preauthorization per 28 Texas Administrative code §134.600(p)(2).

2. 28 Texas Administrative Code §134.600 (c)(1)(A) and (B), states “The carrier is liable for all reasonable and necessary medical costs relating to the health care: (1) listed in subsection (p) or (q) of this section only when the following situations occur:

(A) An emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);

(B) Preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care.”

28 Texas Administrative Code §134.600(p)(2) states “Non-emergency health care requiring preauthorization includes: (2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section.”

28 Texas Administrative Code §133.2 (3) defines “Emergency—Either a medical or mental health emergency as follows: (A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(i) Placing the patient’s health or bodily functions in serious jeopardy, or

(ii) Serious dysfunction of any body organ or part.”

3. Review of the submitted documentation finds that the requestor did not submit documentation to support preauthorization was obtained for the professional/surgical services performed on September 15, 2011. Therefore, no reimbursement is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____	_____	June 21, 2012
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.